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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/059,147	01/31/2002	Lorin R. Sutton	06975-211001 / Network 09	5982
26171 7590 01/11/2007 FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER POLTORAK, PIOTR	
			ART UNIT 2134	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			01/11/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/059,147

Applicant(s)

SUTTON ET AL.

Examiner

Peter Poltorak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-12, 30-35 and 38-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-12, 30-35 and 38-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. In view of applicant remarks in the Pre-Appeal Brief filed on 09/26/06,
PROSECUTION IS HEREBY REOPENED.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior office action.
3. Claims 1-4, 6-12, 30-35 and 38-43 have been examined.

Claim Objections

4. Claims 6 and 7 are objected to because of the following informalities: claim 7 depends on claim 6 and claim 6 is dependent on cancelled claim 5.
For purposes of further examination the phrase is treated as though claim 6 is dependent on claim 1.
5. Appropriate correction is required.
6. Claims 1-4, 6-12, 14-15, 30-35, 38-40 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cotton (U.S. Patent No. 6330590) in view of Bauer (U.S. Pub. No. 20040181462) and further in view of Kim (U.S. Patent No. 6701440).
As per claims 1-3, 12, Cotton discloses inspecting a payload portion of a message being communicated (Cotton, col. 2 lines 21-24) and identifying characteristics of the payload portion (Cotton, col. 2 lines 25-27), comparing the characteristics of the inspected payload portion of the message with stored data indicating characteristics of at least one other message that has been inspected (Cotton, col. 2 lines 25-27) and based on comparison results, identifying a security condition from among at

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least one of acceptable, unacceptable, and indeterminate states, and processing the message based on the security condition (Cotton, col. 2 lines 25-27 and col. 3 lines 33-35).

Cotton discloses rejecting the message if the security condition associated with the message reflects the unacceptable state and accepting the message if the security condition associated with the message reflects the acceptable state (col. 3 lines 31-35).

7. Cotton does not explicitly disclose identifying a security condition as an indeterminate state and monitoring the indeterminate state message by inspecting at least one other message subsequent to the processing of the message.

Bauer discloses an indeterminate state ("unconfirmed") that results in inspecting at least one other message subsequent to the processing of the message (Bauer [78]).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to configure Cotton's system with an indeterminate state and monitoring the indeterminate state message by inspecting at least one other message subsequent to the processing of the message as disclosed by Bauer. One of ordinary skill in the art would have been motivated to perform such a modification in order to allow further review.

8. Cotton in view of Bauer discloses inspecting at least one other message subsequent to the processing of the message (e.g. Cotton, col. 4 lines 20-52) that results in updating the stored data to indicate characteristics of the at least one other message that has been inspected (Cotton, col. 4 lines 39-63).

9. Cotton in view of Baeyer do not explicitly tracking messages and updating the stored data to indicate characteristics of the at least one other message that has been inspected and reprocessing the messages based on the security condition.

Kim discloses tracking messages, updating the stored data to indicate characteristics of the at least one other message that has been inspected and reprocessing messages based on the security condition (Kim col. 2 lines 5-14, col. 7 lines 48-61). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention update the stored data to indicate characteristics of the at least one other message that has been inspected and reprocess tracked messages based on the security condition as disclosed by Kim. One of ordinary skill in the art would have been motivated to perform such a modification in order to keep the store data updated and allow additional attempts to reprocess messages.

10. As per claim 4, Cotton in view of Baeyer discloses that the messages includes an electronic mail message (Cotton, col. 3 lines 6-11), and as per claims 6-7 and 14-15, the security condition associated with a message is identified as reflecting the unacceptable state if the security condition associated with the at least one other message inspected subsequent to the processing of the message is identified as reflecting the unacceptable state and the at least one other message has characteristics in common with the message (Cotton, col. 4 lines 20-52) and removing the unacceptable state message (Cotton, col. 3 lines 34-35 and col. 4 lines 36-37).

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11. As per claims 8-10, Cotton in view of Bauer discloses tracking the characteristics of the payload portion for comparison against characteristics of future messages and does not indicate any exceptions for this comparison (col. 4 lines 19-24).

12. As per claim 11, Cotton in view of Bauer aims to improve the prior art techniques that may not reveal an unacceptable state (e.g. Cotton, col. 1 lines 24-30). As a result, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate Cotton's invention into other prior art inventions (disclosed by Cotton). One of ordinary skill in the art would have been motivated to perform such a modification in order to add additional filtering capabilities.

Prior art discloses filtering messages by source addresses for example (Cotton, col. 1 lines 24-26). Cotton in view of Bauer's invention extend the prior art by comparison of the payload portion and teach identifying a security condition as indeterminate state. Thus, extending the prior art by implementing Cotton in view of Bauer invention would meet the limitation: "wherein an indeterminate state is identified if the comparison of the characteristics does not itself reveal an unacceptable state, but the characteristics of the payload portion would reveal the unacceptable state in combination with similar characteristics of other messages.

13. As per claims 14-15, Cotton in view of Bauer discloses comparing the characteristics of more than one message received by a single device (Cotton, col. 4 lines 20-24), and comparing the characteristics of more than one message sent by a single device and since not only SPAM is frequently initiated by the same entity (Cotton, col. 1 lines 36-38) but also Cotton in view of Bauer does not place any

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exclusion on amount of data (to be compared) received from a particular source address Cotton's invention reads on identifying the security condition includes comparing the characteristics of more than one message received/sent by a single device.

14. As per claims 32-33, Cotton's SPAM messages read on a hostile state and messages that were not found to be SPAM read on neutral state.
15. Claim 31, updated stored data (e.g. as disclosed above) would enable new determination of messages reflecting hostile state, thus unacceptable messages.
16. As per claims 34-35, Cotton in view of Bauer disclose number of subsequent messages inspected with the characteristic above a threshold level characterize a state other than the indeterminate state (Cotton, col. 2 lines 20-25).
17. As per claims 38-39, Cotton in view of Bauer disclose an administrator updating the stored data (Bauer [92]).
18. Claims 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cotton (U.S. Patent No. 6330590) in view of Bauer (U.S. Pub. No. 20040181462) and Kim (U.S. Patent No. 6701440) and further in view of Joyce (U.S. Patent No. 6519703).

Cotton in view of Bauer and Kim's invention teach inspecting message payloads and identifying a security condition as unacceptable, as discussed above.
19. Cotton in view of Bauer and Kim do not disclose generating an alarm at any stage whenever unacceptable state is found.

Joyce discloses generating an alarm at any stage whenever unacceptable state is found (Joyce, col. 4 lines 61-66). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to generate an alarm whenever unacceptable state is found as disclosed by Joyce. One of ordinary skill in the art would have been motivated to perform such a modification in order to alert about discovered problems.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Greenstein (U.S Patent No. 6266692),

Maller (U.S. Patent No. 7072942)

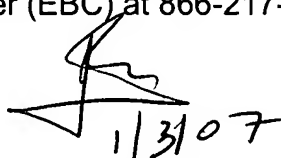
Joyce (U.S. Patent No. 6519703).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Poltorak whose telephone number is (571) 272-3840. The examiner can normally be reached Monday through Thursday from 9:00 a.m. to 4:00 p.m. and alternate Fridays from 9:00 a.m. to 3:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron can be reached on (571) 272-3799. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

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GILBERTO BARRON JR
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100